

SENATE BILL NO. 121

INTRODUCED BY D. SHEA

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PROPRIETARY INSTITUTION THAT IS LOCATED IN THE STATE OR THAT SOLICITS BUSINESS WITHIN THE STATE OF MONTANA TO REGISTER WITH THE DEPARTMENT OF COMMERCE; PROVIDING EXEMPTIONS FROM THE REGISTRATION REQUIREMENT; IMPOSING A \$200 REGISTRATION FEE AND A \$50 ANNUAL RENEWAL FEE FOR EACH PROPRIETARY INSTITUTION; REQUIRING EACH PROPRIETARY INSTITUTION TO POST A \$50,000 SURETY BOND; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Accredited" means a school that has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board or the United States department of education.

(2) "Agent" means a person owning any interest in, employed by, or representing a proprietary institution in this or another state who, by solicitation made in this state in any form, seeks to enroll or enrolls a resident of this state in a proprietary institution for remuneration or who represents to the public that the person is representing a proprietary institution.

(3) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution and 2-15-1505.

(4) "Certificate of registration" means a nontransferable written approval issued by the department to an agent to operate or to contract to operate a proprietary institution in this state.

(5) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(6) "Degree" means any academic, vocational, or honorary title or designation, mark, series of letters, or numbers or words, such as but not limited to "bachelor's", "master's", "doctorate", or "fellow", that signify or are generally understood to signify satisfactory completion of the requirements of a course of study beyond the secondary school level.

(7) "Department" means the department of commerce established in 2-15-1801.

(8) "Educational credentials" means a degree, diploma, certificate, transcript, report, document, or other letters of designation generally understood to mean enrollment in, attendance at, progress in, or satisfactory completion of the requirements or prerequisites for education through a proprietary institution.

(9) (a) "Proprietary institution" means any postsecondary or vocational-technical school, operated either for profit or on a nonprofit basis, that is located in the state of Montana or that solicits business within the state of Montana and that offers educational credentials.

(b) The term does not include an institution established and maintained by the board or the board of public education or a home school operated under 20-5-109.

NEW SECTION. Section 2. Exemptions. The following schools or courses of study are exempt from the provisions of [sections 1 through 10]:

(1) any program or course of instruction of an institution accredited by a national or regional accrediting agency recognized by the board, with notification of that recognition provided to the department by the board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without payment of fees, unless the education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering the education;

(4) education offered by charitable or religious institutions, organizations, or agencies, unless the education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) a school or course of study that is otherwise regulated, licensed, or registered with the state under Title 37; or

(7) an organization offering continuing education for professional licensing requirements.

1 NEW SECTION. **Section 3. Federal requirements -- proprietary institution review.** To protect the
2 interest of students and the federal accounts that support them, the department is designated as the state
3 proprietary institution review entity.

4
5 NEW SECTION. **Section 4. Registration.** (1) A person representing a proprietary institution may
6 not sell, offer for sale, distribute, or cause to be sold, offered for sale, or distributed any course of study
7 in this state unless the person obtains a valid certificate of registration issued by the department.

8 (2) A certificate of registration expires on June 30 of each year.

9
10 NEW SECTION. **Section 5. Agent's certificate of registration.** (1) A person, group, association,
11 or corporation, alone or in concert with others, may not:

12 (a) act as an agent unless the person, group, association, or corporation holds a certificate of
13 registration to operate a proprietary institution issued by the department and maintains a surety bond as
14 prescribed in [section 7];

15 (b) operate a proprietary institution in this state unless the proprietary institution is exempt from
16 the provisions of [sections 1 through 10] or has received a certificate of registration issued by the
17 department;

18 (c) offer instruction at, enrollment in, or grant educational credentials as or through an agent of
19 a proprietary institution that is not exempt from [sections 1 through 10], whether within or outside of the
20 state, unless the agent possesses a valid certificate of registration as required by this section; or

21 (d) accept or receive contracts or applications for enrollment from an agent unless the agent
22 possesses a valid certificate of registration as required by [sections 1 through 10].

23 (2) An application for a certificate of registration furnished by the department must include:

24 (a) a statement signed by the applicant that the applicant has read the provisions of [sections 1
25 through 10];

26 (b) an initial annual fee of \$200 for each certificate of registration. A certificate of registration
27 is valid for the state fiscal year in which it is issued, unless revoked or suspended by the department for
28 fraud or misrepresentation in connection with the solicitation for the sale of any course of study or for any
29 violation of [sections 1 through 10]. Each certificate of registration must be renewed annually on July 1
30 at a cost of \$50. The provisions of the Montana Administrative Procedure Act apply to the denial of a

1 permit or to a proceeding conducted by the department to revoke or suspend a certificate of registration
2 pursuant to [sections 1 through 10].

3 (3) The issuance of a certificate of registration pursuant to this section may not be interpreted to
4 mean, and it is unlawful for a person holding a permit to expressly or impliedly represent by any means,
5 that the department has made any evaluation, recognition, accreditation, or endorsement of any course
6 of study being offered for sale by the agent or the proprietary institution.

7 (4) An agent holding a certificate of registration under the provisions of this section may not
8 expressly or impliedly represent that the issuance of a certificate of registration constitutes an assurance
9 by the department that any course of study being offered for sale by the agent or the proprietary
10 institution will provide the student with education or training necessary to reach a professional,
11 educational, or vocational objective or will result in employment or personal earnings for the student.

12 (5) Any oral or written statement, advertisement, or solicitation by an agent that refers to the
13 department must state:

14 "[Name of proprietary institution] is registered with the Department of Commerce pursuant to
15 [section 4], Montana Code Annotated."

16 (6) An agent may not make any untrue or misleading statement or engage in sales, collection,
17 credit, or other practices of any type that are illegal, false, deceptive, misleading, or unfair.

18 (7) The department shall maintain records for 5 years of each application for a certificate of
19 registration, each bond, and each issuance, denial, termination, suspension, and revocation of a certificate
20 of registration.

21 (8) Fees collected under this section must be deposited in a state special revenue fund to be used
22 by the department for the purpose of administering the provisions of [sections 1 through 10].
23

24 **NEW SECTION. Section 6. Student purchase statement.** Prior to accepting money from a student
25 to purchase a course of study or to enroll in a course of study at a proprietary institution, the proprietary
26 institution shall explain and obtain a signature below the following statement on a form that must be
27 maintained by the institution in the student's file:

28 "I understand that [name of the proprietary institution] is registered with the Department of
29 Commerce in accordance with [section 4], Montana Code Annotated. I also understand that the Board
30 of Regents of Higher Education has not accredited or endorsed any course of study being offered by [name

of proprietary institution] and that credits for courses of study received may not be transferable to a unit of the Montana University System."

NEW SECTION. Section 7. Surety bond. (1) At the time that an application is made with the department for a certificate of registration, the agent of a proprietary institution shall post a \$50,000 surety bond for each proprietary institution located or operating in the state.

(2) The bond required under this section must be executed by the applicant as principal and be issued by an insurer authorized to do business in this state in favor of the state of Montana to indemnify any person for loss suffered as a result of the closure of the proprietary institution or the occurrence, during the period of coverage, of any violation of [sections 1 through 10] or violation of any other law. The bond must continue in effect for a minimum of 2 years after the proprietary institution ceases operation.

NEW SECTION. Section 8. Records and reports. Each proprietary institution shall maintain accounts and records to enable the department to determine whether the proprietary institution is complying with the requirements of [sections 1 through 10]. On its own initiative or upon the filing of a complaint with the department, the department may examine the accounts and records of a proprietary institution.

NEW SECTION. Section 9. Civil relief -- criminal penalties -- enforcement -- injunctive relief. (1) A person claiming loss or damage as a result of a violation of [sections 1 through 10] by a proprietary institution or its agent, or both, may file an action in a court of competent jurisdiction of this state against the proprietary institution or its agent, or both, and their sureties for the amount of damage or loss and, if successful, may receive court costs and reasonable attorney fees.

(2) A person, group, association, or corporation or an agent acting on behalf of another person, group, association, or corporation who violates the provisions of [sections 1 through 10] is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$1,000, by imprisonment not to exceed 6 months, or both. Each day's failure to comply with the provisions of [sections 1 through 10] is a separate violation and criminal penalties may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

(3) The county attorney of any county in which a proprietary institution or its agent is located or soliciting business may acting alone or at the request of the department initiate an appropriate action, including injunctive or criminal proceedings, in a court of competent jurisdiction to enforce the provisions of [sections 1 through 10].

(4) Whenever it appears to the department that a person, agent, group, association, or corporation has violated any of the provisions of [sections 1 through 10] or has violated an order issued by the department, the department may file a petition for an injunction in any court of competent jurisdiction against the person, agent, group, association, or corporation to enjoin the violation or for an order directing compliance with the provisions of [sections 1 through 10].

NEW SECTION. Section 10. Rulemaking authority. The department shall adopt rules to implement [sections 1 through 10], including but not limited to the:

- (1) establishment of policies and procedures for the registration of proprietary institutions; and
- (2) development of a registration form and recordkeeping procedures.

NEW SECTION. Section 11. Repealer. Section 2-15-1804, MCA, is repealed.

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 10].

NEW SECTION. Section 13. Effective dates -- applicability. (1) [Section 10 and this section] are effective on passage and approval.

(2) [Section 1 through 9, 11, and 12] are effective July 1, 2001, and apply to proprietary institutions located in or soliciting business within the state of Montana on or after July 1, 2001.

- END -